

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

**MIDTOWN SCOUTS SQUARE
PROPERTY, LP**

MIDTOWN SCOUTS SQUARE, LLC

DEBTORS.

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**CASE NO. 13-32920
(Chapter 11)**

**DEBTORS' REPLY TO RICHEY FAMILY PARTNERSHIP, LTD. POST-
CONFIRMATION BRIEF (DOC. 212)**

This Reply to the Post-Confirmation Brief filed by the Richey Family Partnership, Ltd (“RFLP”) is being made to (i) expose how it mis-cites a case cited by the 5th Circuit in the *TMT* decision; (ii) cites to case authority which has long been overruled by statute for the second time; and (iii) completely ignores the agreement upon which its disputed claim to a 27% interest is based and upon the law of business associations.

Question Presented

The very narrow question presented by this Court to the Debtors and RFLP at the conclusion of the confirmation hearing was as follows: Under the 5th Circuit’s recent decision in *Matter of TMT Procurement Corporation*, does the Court have jurisdiction to confirm a plan which provides for issuance of equity in the Debtors?

Mis-Citation to TMT

In its brief, RFLP states that the Court lacks jurisdiction to confirm a plan which provides for the issuance of equity based on the citation in the *TMT* case to *In re Paso Del Norte Oil Co.* The *TMT* court cited this case in footnote 60 of its opinion for the following general proposition.

This Court has previously held that bankruptcy jurisdiction does not extend to state law actions between non-debtors over non-estate property.

The *TMT* court simply never ruled that a bankruptcy court lacks jurisdiction to confirm a plan which provides for issuance of new equity in the Debtor itself because the subject matter of that case involved equity of a non-debtor. Moreover, *TMT* did not involve confirmation of a plan.

Pasa Del Norte Is An Old Act Case Which Has Been Overruled by Statute

For the second time in this case, RFLP is attempting to sway the Court by citation to a case which has been overruled by statute. In its objection to confirmation, RFLP cited *In re Texas Consumer Finance Corp.*, 480 F.2d 1261 (5th Cir 1973) for the proposition that a business entity has no property interest in its own shares. However, *Pasa Del Norte* suffers from the same problem as *Texas Consumer Finance*. Both of these cases were decided under Chapter XI of the Bankruptcy Act of 1898 which did not permit issuance of new equity in the Debtor. Under the Old Act, the issuance of new equity was only permitted under Chapter X. Under Chapter 11 of the Bankruptcy Code, the issuance of new equity in the Debtor is expressly contemplated by 11 U.S.C. § 1123(a)(5)(J) and 28 U.S.C. 157(b)(2)(O).

RFLP's Attempt To Hide From Its Own Alleged Agreement

RFLP attempts to posture this case as a dispute between itself and Dr. Chopra. The argument goes that since neither are debtors, the Court has no jurisdiction. This is untrue for at least three reasons. First, the dispute is over equity **in** the debtor. Simply because this court remanded the dispute to state court where it originated doesn't mean this court lacks jurisdiction. No such finding was made in the remand order. Second, the LOI under which RFLP claims ownership of 27% specifically states that such 27% can come from either Dr. Chopra **or** the Debtor. So if RFLP prevails, there is no reason why such equity cannot be issued by the Debtor. Last, it is clear under the law of business associations that an entity can issue new equity which

then dilutes existing equity. This is precisely what the plan provides for and is precisely what is contemplated by the Code provisions cited above.

For the foregoing reasons, and all of the reasons stated in their prior Post-Confirmation Brief, the Debtors respectfully urge the Court to confirm the plan as modified.

DATED: November 7, 2014

Respectfully Submitted,

HOOVER SLOVACEK LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2014, a true and correct copy of the above and foregoing Reply Brief was served via the ECF system to the parties listed below.

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